fundamentally on these grounds that we allow this appeal.

Appeal allowed.

Solicitors: *Sandhu & Co.*

BASIR BIN BADONGGO & ORS. v. PUBLIC PROSECUTOR

[C.A. (Yang P., Silke & Godfrey JJ.) 26 May 1988]

[Bandar Seri Begawan – Criminal Appeal No. 4 of 1988]

Criminal Procedure – Sentencing – Whether sentences of 12 years' and 14 years' imprisonment for gang robbery are excessive – Penal Code, ss. 34, 39, 394, 456 & 457.

The appellants pleaded guilty to various charges of gang robbery, voluntarily causing hurt using a variety of deadly weapons and housebreaking by night. Their sentences were as follows: first and second appellant – 12 years' imprisonment for gang robbery and voluntarily causing hurt using deadly weapons; third appellant – 14 years' imprisonment for gang robbery and 4 years' imprisonment on each of the housebreaking charges, the sentences to run concurrently. They appealed against their sentences to the Court of Appeal.

Held, dismissing the appeal: the sentences imposed upon the appellants are entirely correct. If the appellants had pleaded not guilty, a sentence of 15 years' would have been appropriate for a gang robbery of this nature.

Cases referred to:

(1) *R.* v. *Burnett* [1988] Crim. L.R. 190 (distd).
(2) *Public Prosecutor* v. *Sawmill Ringgip* Criminal Case No. 2/1986 (folld).
(3) *Public Prosecutor* v. *Wan Razali* Criminal Case No. 1/1986 (folld).

COURT OF APPEAL.

Appellants in person.

Ivan Leong (Deputy Public Prosecutor) for the respondent.

Cur. Adv. Vult.

Yang P. (delivering the judgment of the court): The three appellants pleaded guilty to a charge brought under section 391 read with section 394 and section 34 of the Brunei Penal Code, alleging that these appellants together with three other persons, namely, Rasid, Landing and Jong, in furtherance of their common intention, did commit a gang robbery at a house at Gadong and at the time of committing such gang robbery they did voluntarily cause hurt using a variety of deadly weapons.

The third appellant also pleaded to two further charges of housebreaking by night with intention to commit theft: section 457 of the Penal Code, and to one charge of housebreaking by night under section 456.

The first appellant and the second appellant were each sentenced to 12 years' imprisonment. The third appellant was sentenced to 14 years' imprisonment on the charge of gang robbery and to four years on each of the housebreaking charges, the sentences to run concurrently. They now appeal against their sentences.

The facts on the main charge of gang robbery are straightforward. On 1 September 1987, the second and third appellants together with their three confederates entered Brunei illegally from Labuan. Of those people, Rasid and Landing were apparently the leaders. On arrival, they were met by the first appellant who accommodated them in a partly constructed house where the first appellant was the building contractor. He was also to provide transport for them whilst they were in Brunei. Their plan was to burgle and rob a house selected by the first appellant and decided on by Rasid.

Rasid had with him a long knife, Landing an iron pipe and Jong a chisel. The second and third appellants did not carry weapons. On the night of 2 September last year, the first appellant drove these five men to a hillside. They waited there until 3.00 a.m. on 3 September when the five men went down the hill and went up to the targeted house, bringing with them a number of housebreaking tools in addition to the weapons already referred to.

Rasid and Jong entered the first floor of the house through a window and let the others in through the back door. They knocked on the door and were allowed in by the lady of the house. As soon as they saw the lady, they assaulted her and she immediately raised the alarm. A general melee then ensued between the lady, her husband and two sons on one side and the intruders on the other. During the struggle, one of the sons was pushed down the staircase and was knocked unconscious, remaining so for some hours until he came to in the hospital. This son also sustained quite serious injuries including lacerated wounds on his right and left elbows. All four members of the household sustain-

ed injuries to a lesser extent. The second appellant sustained a cut wound to his face when the other son swung his ornamental samurai sword at the intruders.

Fortunately for the occupants of the house, a police party was nearby on their nightly burglary patrol. On hearing the commotion from the house, they quickly went towards that house with torches shining. On seeing the police approaching, the third appellant shouted a warning to his companions and all five men broke off and ran away in different directions.

In his attempted escape the second appellant fell off a small cliff and was injured in the leg. He tells us this afternoon that he has sustained a permanent injury to the leg and can now only walk with a limp. The third appellant and three other culprits hid in a hut at the back of the first appellant's house and was provided not only food but also food until some time later when they were discovered by the police. The third appellant was then arrested.

Nothing could be said in mitigation for any of the appellants except for their ready pleas of guilty. They all have clear records but then for those people who had entered Brunei illegally and for short periods, it is not expected that they would have any records.

Mr. Leong cited three authorities to us. The first one is *R.* v. *Burnett*[1] where it was held that a starting point of ten years is correct for a robbery in a private house. We do not find this case of much assistance to us because social circumstances in England are very different from those in this country. Two other High Court cases of Brunei are directly in point: *Public Prosecutor* v. *Sawmill Ringgip*[2] and *Public Prosecutor* v. *Wan Razali.*[3] In both of these cases, Mr. Commissioner Liu sentenced the defendants to 12 years' imprisonment. It is to be noted that in these two cases none of the victims were injured.

We are of the view that the sentences imposed upon the appellants are entirely correct. If they had pleaded not guilty, a sentence of 15 years would have been appropriate for a gang robbery of this nature. In all the circumstances, we see no merit in these appeals and they are accordingly dismissed.

Appeal dismissed.

MALAYSIAN REPORTS

CHONG SOOI CHUEN v. YUEN LAI CHUN

[S.C. (Lee Hun Hoe C.J. (Borneo), Seah & Syed Agil Barakbah S.C.JJ.) 4 February & 31 May 1988]

[Kuala Lumpur – Civil Appeal No. 17 of 1985]

Civil Procedure – Appeal on questions of fact – Decision based on credibility of witnesses – Appeal court slow to interfere.

In this case, the respondent was the widow of one Kong Foo Chai, deceased. The deceased had been granted land and had entered into an agreement with one Chong Kam to clear the land and plant rubber trees. The deceased promised to pay Chong Kam $1,000 for looking after the rubber trees. The deceased was unable to pay the $1,000 when he died. After the death of the deceased, the respondent tried to pay off the $1,000 but Chong Kam asked for more. Later, the respondent found the appellant tapping the rubber trees. She asked him to leave but he refused. The appellant claimed that he and Chong Kam had purchased the land from the deceased for $500 and that the appellant had contributed half the amount. The respondent brought an action to recover possession of the land. The learned judge of the High Court gave judgment for the respondent. The appellant appealed.

Held, dismissing the appeal: (1) the learned judge had seen and heard the witnesses and would be in a better position to assess their credibilities. In such a case, the appellate court should be slow to interfere;

(2) the learned judge was clearly not impressed by the appellant as he was with the respondent. He was not convinced that the appellant had paid any money to the deceased. He was satisfied on the oral and documentary evidence that the respondent had established her case against the appellant. The court was unable to find any reason to interfere with the finding of the learned judge.

SUPREME COURT.

Lim Seong Chun for the appellant.

Lim Boon Seng for the respondent.

Cur. Adv. Vult.

Lee Hun Hoe C.J. (Borneo) (delivering the judgment of the court): This is an appeal against the decision of the learned judge ordering delivery of vacant possession of two pieces of land situated at Sungai Durian in the Mukim of Tanjong Tualang, Perak and described as Geran Mukim GM 249 No. 41061 and Geran Mukim GM 250 No. 41062 ("the said land").

The respondent/plaintiff is the widow of Kong Foo Chai (deceased) who died on 9 March 1961. She was appointed administratrix of his estate. In that capacity she sued the appellant/first defendant and his brother, the second defendant, for occupying "the said land" and prayed